IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

LAXMAN TANEJA. V. THE STATE OF RAJ. AND OTHERS.

S.B.CIVIL WRIT PETITION NO.4446/2002.
Under Article 226 of the Constitution of India.

DATE OF ORDER: 13.4.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Kuldeep Mathur, for Petitioner.
Mr.Rameshwar Dave, Deputy Government Advocate, for Respondents.

BY THE COURT:

The instant writ petition has been filed by Shri Laxman Taneja – petitioner praying therein that by an appropriate writ, order or direction, the amendment dated 21.11.2002 made in the Rajasthan State Pensioners Medical Concession Scheme (hereinafter referred to as 'the Medical Concession Scheme'), whereby a pensioner and members of his family have been declared entitled for grant of financial assistance in respect of specialized treatments taken in a Government hospital within the State of Rajasthan only, may be declared illegal, so far as it

restricts grant of financial assistance in respect of specialized treatments taken in the Government hospital within the State of Rajasthan. It has further been prayed that by an appropriate writ, order of direction, the respondents may be directed to provide financial assistance to a pensioner and the members of his family in respect of specialized treatments taken in a Government hospital within the State of Rajasthan or from any other hospital where such specialized treatment is available. It has also been prayed that by an appropriate writ, order or direction, the order dated 5.6.2002 (Annexure 6), passed by Respaondent No.4 – Treasurer, Officer of the Treasurer, Collectorate, Barmer - rejecting claim of the petitioner for medical reimbursement, may be declared illegal. Lastly, it has been prayed that by an appropriate writ, order or direction, the respondents may be directed to provide financial assistance to the petitioner for specialized treatment taken by his wife as per the bill submitted by him for medical reimbursement.

Brief facts giving rise to the instant petition are that the petitioner was retired from service on February 27, 2001. At the time of his retirement, he was holding the post of Assistant Engineer in Indira Gandhi Nahar Pariyojana.

After retirement, the respondents under Rule 244 (1) of the Rajasthan Service Rules (hereinafter referred to as 'the R.S.R.'), issued Pension Payment Order (PPO) No.432212 dated 27.9.2001 (Annexure 1) in favour of the petitioner.

The wife of the petitioner – Smt. Raj Kumari Taneja is suffering from heart disease and had undergone Mitral Valve Replacement Operation (for short, 'MVR') in the year, 1986, at Bombay.

The State Government, on 21.11.2001, issued Order No.F.1 (5)FD/Rules/98 (Annexure 2) making certain amendments in the Rajasthan State Pensioners Medical Concession Scheme, whereby pensioners and their family members have been held entitled for grant of financial assistance in respect of the following specialized treatments taken in the Government Hospitals within the State of Rajasthan:-

S.No.	**Name of Specialized.**	**Scale of Assistant.**
1.	By-pass Surgery.	80% of the hospitals expenses or Rs.1.20 Lacs whichever is less.
2.	Open-Heart Surgery.	80% of the hospital expenses or Rs.1.20 Lacs whichever is less.
3.	Valve-Replacement.	80% of the hospital expenses or Rs.1.20 Lacs whichever is less.
4.	Implantation of pacemaker.	80% of the cost of pace maker including its accessories of Rs.28,000 whichever is less.
5.	Angioplast/Ballonplasty.	80% of the hospital expenses or Rs.40,000/- whichever is less.

A bare perusal of the above Scheme clearly reveals that a Pensioner is entitled for grant of financial assistance in respect of

specialized treatment taken in a Government hospital up to 80% of the hospital expenses or Rs.1.20 Lacs whichever is less.

The wife of the petitioner fell sick on 28.1.2002 due to her heart problem and as an emergency case, she was admitted in Fortist Heart Institute, Mohali (Punjab).

After diagnosis, she was suggested MVR operation. Thus, to save her life, the petitioner got her operated in Fortist Heart Institute, Mohali, on 4.2.2002. The patient remained hospitalized from 28.1.2002 to 11.2.2002. Dr.H.S.Bedi of the Fortist Heart Institute, Mohali has also issued a Certificate (Annexure 3) to this effect.

The petitioner spent a sum of Rs.2,72,804/- on the treatment of his wife as is evident from the inpatient bill No.ICS001184 (Annexure 4) issued by the Fortis Heart Institute, Mohali.

The petitioner submitted a bill for medical reimbursement, claiming a sum of Rs.2,72,804/- along with an application dated 9.5.2002 (Annexure 5) before Respondent No.4.

Respondent No.4, vide Order dated 5.6.2002 (Annexure 6), rejected the application of the petitioner for medical reimbursement informing him that the financial assistance to a pensioner or the members of his family can be extended in terms of Order dated 21.11.2001 (Annexure 2) only, issued by the Government of Rajasthan.

Being aggrieved by order No.F.1(5)FD/Rules/98 dated

21.11.2001 (Annexure 2) and the order dated 5.6.2002 (Annexure 6), the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that at the time when his wife was taken to the hospital, he was not in a position even to think and ascertain as to which hospital will make him entitle for medical reimbursement. The Fortist Heart Insitute, Mohali was the nearest hospital for such type of specialized treatment, therefore, he shifted his wife for medical assistance to the said hospital.

It is further submitted by the learned counsel for the petitioner that in case of urgency, one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical institute situated in the State of Rajasthan. In the case of an emergency, the decision has to be taken forthwith by the person or his attendant as precious life has to be saved. Therefore, the amendment made in the Rajasthan State Pensioners Medical Concession Scheme vide Order No.F.1 (5) FD/Rules/98 dated 21.11.2001, so far as it deprives pensioners for grant of financial assistance in respect of specialized treatments taken outside Rajasthan, may be declared illegal and arbitrary.

It is also submitted by the learned counsel for the petitioner that presently, the petitioner is residing in District Panipat of the State of Haryana. Earlier, in the year, 1986, his wife had

undergone an operation of MVR at Bombay. Due to serious condition, his wife was admitted in the Fortist Heart Institute, Mohali, on 28.1.2002 and, on being advised by the Doctor, she underwent emergency MVR operation on 4.2.2002 there . Under these circumstances, the petitioner had no time to take his wife to the State of Rajasthan for the specialized treatment of Valve replacement from a Government hospital. In case of emergency, one has to take treatment immediately. The wife of the petitioner was suffering from a serious problem and, therefore, without wasting time, she was taken to Fortist Heart Institute, Mohali, which is the nearest specialized hospital.

It is vehemently argued by the learned counsel for the petitioner that the State of Rajasthan has denied fundamental right of a pensioner for self prevention and delaying process involved in the emergency cases. Self prevention of ones life is necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India. Therefore, the Policy of the Government making pensioners and members of his family entitled for grant of financial assistance in respect of specialized treatments taken in a Government hospital within the State of Rajasthan may be declared illegal.

It is strenuously contended by the learned counsel for the petitioner that denial of financial assistance for specialized treatment taken outside Government hospital within or outside the State of Rajasthan is having no nexus with the object sought

to be achieved by making amendment in the Rajasthan State Pension Medical Concession Scheme. The object of providing financial assistance is to save retired employees from the heavy financial burden of expensive medical/specialized treatment. Thus, according to the learned counsel, it is no just and fair on the part of the respondents to deprive the petitioner form the medical reimbursement as per the scale of financial assistance provided in the Scheme.

In support of his contentions, learned counsel for the petitioner has relied on the case of Surjit Singh v. State of Punjab and Others (1996) 2 SCC 336, in which it has been held by their Lordships of the Supreme Court that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago, thinkers of India conceived of such right and recognised it. It was further held by their Lordships of the Supreme Court that the appellant had the right to take steps in self-preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the Government hospital of AIIMS and could go elsewhere to an alternative hospital.The doctors causing his operation there are

presumed to have done so as one essential and timely.

Learned counsel for the petitioner has also relied on the decisions of this Court rendered in Ashok Bapna v. State of Rajasthan (2004 (3) WLC (Raj.) 19), Smt.Harbir Kaur v. State of Rajasthan & Others (2004 (4) WLC (Raj.)685) and Kailash Prasad Gupta v. State of Rajasthan & Others (2005 (2) WLC (Raj.)111), Tulsa Ram v. State of Rajasthan & Others (2005 (2) WLC (Raj.) 251) and Himmat Singh v. State of Rajasthan & Others (2005 (2) WLC (Raj.)268).

It is submitted by the learned counsel for the respondents that on 4.2.2002, the wife of the petitioner had undergone Mitral Valve Replacement Operation out of the State of Rajasthan, in the Fortist Heart Institute, Mohali (Punjab). It is further submitted that as provided under para 4A of the Medical Concession Scheme, the petitioner was entitled for medical reimbursement for the treatment taken in the hospital/institution outside the State recognised by the State Government. Para 4A of the Medical Concession Scheme reads as under :-

> "4A. Treatment of a disease for which treatments is not available in the Government hospitals of the State :- (1) A pensioner and the member of his family as defined in sub-para (5) of para 3 of the Scheme suffering from a disease for which treatment is not available in any Government hospital in the State shall be entitled to financial assistance under the Scheme @ 80% of hospital expenditure or Rs.1,20,000/- whichever is less in case treatment is taken in a hospital/institution outside the State, recognised by the State Government provided that it is certified by the Principal of a Medical College/Director

of Medical & Health Services on the basis of opinion of the Medical Board constituted by the Principal for the purpose to the effect that the treatment of a particular disease from which the patient is suffering is not available in any Government hospital in the State and it is considered absolutely essential for the recovery of the patient to have treatment at a hospital outside the State.

(2) ... ...".

It is submitted by the learned counsel for the respondents that the State Government has recognised the following hospitals/institutions for treatment outside the State in the matters of complicated heart surgery cases as provided in Appendix-II of Rajasthan Civil Services (Medical Attendance) Rules, 1970 (for short, 'the Rules, 1970'), and by virtue of para 4A (2) of the Medical Concession Scheme, the aforesaid Rules of 1970 has been made applicable for the purposes of cases mentioned in sub-para (1) of Para 4A :-

1. Christian Medical College & Hospital, Vallore.
2. K.E.M. Hospital, Bombay.
3. All India Institute of Medical Sciences, New Delhi.
4. Bombay Hospital, Bombay.
5. G.B.Pant Hospital, Delhi.
6. Post-Graduate Institute, Chandigarh.
7. N.M.Wadia Institute of Cardiology,Pune.
8. Appolo Hospital, Madras.
9. Escorts Heart Institute, New Delhi.

It is also submitted by the learned counsel for the respondents that the petitioner is misconceived in arriving at the conclusion that he could not undergo his wife's specialised treatment outside the State of Rajasthan. It is clear from the amendment made in para 4B of the order dated 21.11.2001 (Annexure 2) that the procedure for getting specialised treatment and claiming financial assistance shall be same as provided in para 4A of the Medical Concession Scheme.

It is contended by the learned counsel for the respondents that the petitioner's wife has undergone specialised treatment in a private hospital, whereas the specialised treatment outside the State of Rajasthan can be undergone only in the State Government recognised hospitals/institutions. Since the petitioner's wife has not undergone specialised treatment in the recognised hospital/institution, admittedly the petitioner is not entitled for medical reimbursement. Therefore, the denial of the medical reimbursement to the petitioner by the respondents is justified and is based on the provisions of the Medical Concession Scheme

Heard learned counsel for the parties.

It is admitted position that the wife of the petitioner has undergone an emergency Re-do MVR operation on 4.2.2002, as is evident from the Certificate (Annexure 3), issued by Dr.H.S.Bedi, Senior Consultant Cardio Vascular & Thoracic Surgery, Fortis Heart Institute, Mohali, Punjab. In a welfare

State, the welfare of the people is frustrated just because of bureaucratic approach of the concerning authorities. A person having put in whole life in the services of the State till he attains the age of superannuation always require human consideration. Technicalities of rules and regulars are not required to be followed just in a mechanical manner so as to frustrate the very purpose of the Scheme. Each case has to be examined on its own facts before taking any final decision. While granting such benefits under the beneficial schemes, the essential, immediate and timely medical assistance are the primary considerations , while the financial constraints are always secondary considerations.

It is pertinent to mention here that pathetic conditions of Government hospitals is well known and the same has been admitted by the Government machinery also time and again. Under the circumstances, when a person explains reasons for getting the treatment in a private hospital, the reimbursement should not be denied only on some hyper technical grounds. The Government must give relaxation in such matters.

Apart from that, to preserve health and obtain medical aid in furtherance of self preservation is part of right of life under Article 21 of the Constitution of India and, in given circumstances, the petitioner is also entitled for reimbursement of medical expenses, irrespective of the place where the treatment has been received.

It is significant to note that denial of reimbursement on technical grounds is nothing but an arbitrary, unreasonable and unjust action of the respondents.

Consequently, the order dated 5.6.2002 (Annexure 6), issued by Respondent No.4 is quashed and set aside. The petitioner is entitled for reimbursement at the rate of 80% amount of expenditure on the treatment of his wife as per the bills submitted by him or Rs.1,20,000/-, whichever is less as per the Medical Concession Scheme. The respondents are directed to make necessary payment to the petitioner within 30 days from the date of receipt of a certified copy of this order.

There will be no order as to costs.

The writ petition stands disposed of as indicated above.

(R.P.VYAS),J.

Scd.